

III. FACTS

History: Work Animosity and Budget Issues

On or about July 1, 2012, Colfax Mayor Todd Vanek hired Chief McNannay to be the Police Chief for the City of Colfax Police Department. Chief McNannay's background check was performed by John Young of Clear Risk Solutions ("Clear Risk"). *See* Young Dep. Transcript 25: 4-17. Clear Risk is a third-party administrator for the City's insurance carrier, Cities Insurance Association of Washington (CIAW). *See* Declaration of Chris Mathis. Included with the City's premiums to CIAW is access to various programs administered by Clear Risk, including workplace investigations. *Id.* The City has utilized the workplace investigations program provided by Clear Risk on multiple occasions in making both hiring and firing decisions with no voiced concerns by either the City Council or the Civil Service Commission. *Id.*; *See also* Declaration of D. Todd Vanek.

Then City Finance Director Chris Mathis was hired in October of 2015, it became clear that Chief McNannay was mismanaging his budget. Mathis Decl. Chief McNannay failed to submit his budget at the beginning of September of 2015, when the budget was due. *Id.* Things became heated in early November when Ms. Mathis discovered Chief McNannay still failed to submit his budget—which was due two months prior. *Id.* It was only after former City Administrator, Dodd Snodgrass, admonished Chief McNannay to submit his budget that he begrudgingly did so. *Id.*

1 Budget issues continued to be an ongoing problem for the Police Department under
2 Chief McNannay's control. *Id.* Even though the Police Department continuously received yearly
3 budget increases, the Police Department continued to mismanage the budget, going over budget
4 yearly. *Id.* Examples of budget mismanagement include spending four to five times the yearly
5 budget on part-time officers when there were fulltime officers available to fill all shifts. *Id.*

7 **December 2016: Part-Time Hires and the CJTC**

8 Chief McNannay is expressly responsible under the Commission's Rules to manage
9 department manpower and budget, as well as have responsibility for official Law Enforcement
10 records. Accordingly, Chief McNannay was responsible for ensuring that newly hired officers
11 complied with statutory mandates. Since 2005, the law has mandated that prior to the
12 employment of any law enforcement officer, fulltime or part-time, the hiring authority must
13 conduct poly/psych/background investigations as a condition of employment. Declaration of
14 Tisha Jones. In case there is confusion in interpreting the statutory mandates, CJTC Certification
15 Managers put on numerous training conferences each year to which law enforcement officers
16 throughout the State of Washington are invited to attend. *Id.* At each conference, CJTC
17 Certification Managers train on the certification process, including the mandated
18 poly/psych/background investigations that are required prior to employment. *Id.* Chief
19 McNannay was aware of these training conferences, but never sought this type of training from
20 CJTC. *See* McNannay Dep. Transcript 28: 4-7.

24 It is important to note that if a new hire has previously been certified and such
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1 certification is still valid, the failure to perform the poly/psych/background investigations will
2 not result in lost certification, unless the officer falsely certifies to CJTC that the officer has met
3 all pre-employment mandates. *See Jones Decl.* Certification is personal to the officer and
4 follows the officer to subsequent employers regardless of whether the poly/psych/background
5 investigations are performed. *Id.*

7 In August and September of 2016, Chief McNannay hired Officers Joseph Handley and
8 Steven Perez for part-time officer positions with the City. *See McNannay Dep.* 116: 1-5; 126:
9 10-11. Chief McNannay, upon hiring these officers did not check the statutory mandates to
10 verify the officers needed the required poly/psych/background investigations. *See McNannay*
11 *Dep.* 12: 3-7; 127: 2-25; 128: 1-4. He also never consulted with the City Attorney, or any City
12 employee for assistance with the certification process. *See id.* On November 30, 2016, Chief
13 McNannay submitted the Notice of Hire form for Joseph Handley to CJTC Certification
14 Manager, Tisha Jones. *See Exhibit 1* (emails from McNannay to Jones). Ms. Jones, then
15 subsequently emailed Chief McNannay, explaining that Mr. McNannay, whom she believed was
16 the individual at the City of Colfax responsible for compliance with statutory mandates relating
17 to police officer employment and certification, was required to administer his own
18 psychological, polygraph, and background examinations for Officer Handley. *See Jones Decl.*;
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22 *see also Exhibit 1.*

23 When Ms. Jones spoke with Chief McNannay on the phone in November 2016, she
24 explained to him that CJTC had no enforcement mechanism to decertify the law enforcement
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1 officers he had hired despite not performing the pre-employment poly/psych/background
2 investigations. *See* Jones Decl. During this November 2016 phone conversation, Chief
3 McNannay never provided Ms. Jones with any background information regarding the officers at
4 issue. *Id.* This information would have included, for example, that one of the officers had been
5 terminated by another agency as a result of being the perpetrator in a serious domestic violence
6 event. *See Exhibit 2* (newspaper article re: Domestic Violence). Mr. McNannay also neglected
7 to inform Ms. Jones that another officer previously hired without the mandated
8 poly/psych/background investigations had not made it through probation with another agency.
9 *See* McNannay Dep. 152: 14-25. Based on her conversation with Chief McNannay, Ms. Jones
10 was under the impression that the officers being discussed were being hired part-time while in
11 good standing with another entity. *See* Jones Decl. With this false understanding, Ms. Jones
12 suggested Chief McNannay submit the older forms for the already hired officers because CJTC
13 could not do anything about their certification under the facts presented and the old forms were
14 the forms in effect at the time of hire. *See* Jones Decl. However, Ms. Jones never told Chief
15 McNannay that the officers were “grandfathered” out of the statutory mandates; she simply
16 informed him that CJTC has no enforcement mechanism for the non-compliance. *Id.* In fact,
17 Ms. Jones, herself, admits she has no authority to waive the statutory mandates of the
18 poly/psych/background investigations. *Id.*

23 Chief McNannay was not only obligated to follow state law, he was also obligated to
24 follow the Commission’s Rules. Chief McNannay was familiar with the Commission Rules.
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1 See McNannay Dep. 102:19-25, 103 1-3. According to Rule 7.06, "Candidates who are offered
2 a position shall submit to, and pass psychological testing as directed by the Police Department.
3 Successful passing of the test shall be a condition of hiring." (Emphasis added.) Rule 7.07
4 similarly mandates, "Candidates who are offered a position shall submit to, and pass a
5 polygraph test directed by the Police Department. Successful passing of the test shall be a
6 condition of hiring." Importantly, Ms. Jones never advised or directed Chief McNannay on his
7 obligations under any policies unrelated to CJTC that govern pre-employment mandates for law
8 enforcement officers hired by the City of Colfax. *See* Jones Decl. She further did not comment,
9 and Chief McNannay did not ask, how being out of compliance might affect the Police
10 Department or the City of Colfax in matters arising outside of CJTC's scope of authority. *Id.*

13 After Ms. Jones' phone conversation with Chief McNannay, Ms. Jones did not make a
14 record of her conversation him. *Id.* Ms. Jones is unsure why Chief McNannay did not make a
15 record of their conversation contemporaneous with signing the forms or note on the forms that
16 he was signing per her suggestion. *Id.* However, regardless of Chief McNannay's conversation
17 with Tisha Jones, the Department was not in compliance with state law mandates. *Id.*

18 **Exempt Status and the WSU Contracts**

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20 In June of 2017, the Mayor and Chief McNannay began negotiations for Chief
21 McNannay to accept a contract placing Chief McNannay in exempt status. *See* Vanek Decl. The
22 reason for Chief McNannay's exempt status was to control his overtime and his inability to
23 manage the Police Department within budget. *See* Mathis Decl. The Mayor did not wish to
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1 deny Chief McNannay his Civil Service protection and, in fact, Chief McNannay admitted at his
2 own deposition that Civil Service protection is automatically given and did not need to be
3 written in the contract. *See* Vanek Decl.; McNannay Dep. 102: 19-23; 103: 1-3.
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5 On June 4, 2017, Mayor Vanek presented Chief McNannay his contract with his new
6 exempt status and higher salary. *See* **Exhibit 3** (Exempt Status Letter). At \$75,000, Chief
7 McNannay became the highest paid City employee. *See* Vanek Decl. Before signing the
8 contract, Chief McNannay asked the mayor if he could continue working the WSU games. *See*
9 Vanek decl. The mayor stated he was unsure and called in Ms. Mathis to get her opinion. *See*
10 Vanek decl. Ms. Mathis stated that as an exempt employee, Chief McNannay could not be paid
11 overtime for the WSU games. *See* Mathis Decl.; *See also* Vanek Decl. However, she did say that
12 if he were to work the games as, for example, an independent contractor, he could possibly get
13 paid for the games. *See* Mathis Decl. It is important to note that at no time did Ms. Mathis say
14 the WSU payment could “pass-through” to Mr. McNannay. *See* Mathis Decl.; *see also* Vanek
15 Decl. Additionally, at the time of negotiations, neither the mayor nor Ms. Mathis were aware
16 that Chief McNannay entered into any written agreement with WSU on behalf of the City—even
17 though Ms. Mathis asked Chief McNannay multiple times if there was a written agreement in
18 place. *See* Vanek Decl.; *See also* Mathis Decl. Despite not verifying his ability to be
19 compensated by the City, Chief McNannay continued to perform security work for the WSU
20 games as an employee of the City.
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1 **Wage Claim**

2 Mayor Vanek was in no way conspiring not to pay Chief McNannay. *See* Vanek Decl. In
3 fact, to the contrary, in an email dated December 11, 2017, Mayor Vanek explicitly told Ms.
4 Mathis to pay Chief McNannay. *See Exhibit 4* (email chain between Vanek and Mathis).
5 However, as Ms. Mathis told the Mayor and Chief McNannay at the June 4, 2017 meeting,
6 Chief McNannay, as an exempt employee, could not be paid overtime as it would constitute an
7 illegal gifting of public funds. *See* Mathis Decl.; *see also Exhibit 4*. It was only after the Mayor
8 discussed the WSU contract issue with both Ms. Mathis and the City Attorney that the Mayor
9 concluded Chief McNannay could not be paid for his time worked at the WSU games. *See*
10 Vanek Decl.; *see also Exhibit 4*.
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12 **Failure to Satisfy Training Requirements**

13 Proper training of police officers helps ensure that qualified officers are protecting City
14 of Colfax citizens. WAC 139-05-300 requires 24 hours of annual in-service training for each
15 police officer in the Police Department. If one police officer is out of compliance, the entire
16 Police Department is out of compliance. An email to Chief McNannay from CJTC in March
17 2018 was located indicating that the Police Department was out of training compliance for 2017.
18 *See Exhibit 5* (Email from CJTC to McNannay). According to the training log attached to the
19 letter, Chief McNannay was personally out of compliance with the training requirements, as he
20 was missing 18 hours of mandated training. A request for an extension would have had to be
21 submitted in 2017. The fact that this letter was sent in April 2018 indicates that no such
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1 extension was timely requested and the statutory requirements not satisfied. As such, Chief
2 McNannay and the entire Police Department were out of training compliance in 2017. *See*
3 Jones Decl.

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5 **Progressive Discipline and Interlocal Agreements**

6 In November of 2017, Chief McNannay entered into an interlocal agreement with
7 Whitman County Public Hospital on behalf of the City. (“Hospital Contract”) *See Exhibit 6*
8 (Hospital Contract). Notably, Chief McNannay did not discuss the Hospital Contract with the
9 Mayor, City Administrator, or City Attorney prior to signing. *See Vanek Decl.; see also Mathis*
10 *Decl.* The Hospital Contract required the City to provide 24-hour coverage. *See Exhibit 6.* By
11 Mr. McNannay’s own testimony, the 24-hour coverage did not occur—exposing the City to
12 liability for breach of contract. The Mayor verbally reprimanded Chief McNannay for his
13 actions. *See McNannay Dep. 53: 25; 54: 1-25; 55: 1-16.*

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15 Chief McNannay continued to expose the City to liability by working officers at the
16 WSU games and then for a City shift for a total of 18 hours. Chief McNannay believes public
17 safety is affected after an officer is on duty for 15 – 20 hours. McNannay Dep. 40:10-25, 41:1-
18 5. At least once, an officer was so exhausted from working the football games, the officers
19 could not work his shift for the City, thus leaving the City without police coverage. *See Mathis*
20 *Decl.*

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22 On December 7, 2017, Chief McNannay was reprimanded in written form for failing to
23 submit paperwork for a grant. *See Exhibit 7* (written reprimand). This failure resulted in a
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1 \$17,000 loss to the City. *Id.* While Chief McNannay claims the paperwork for the grant was
2 never sent to him, emails from CJTC expressly state that the paperwork was, in fact, sent in the
3 standard mail. *See Exhibit 8* (Emails re: McNannay to CJTC). Mr. McNannay was also
4 reprimanded via email from City Council member, Jim Kackman. *See Exhibit 9* (Kackman
5 email re: didn't get paperwork in).
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7 Although Chief McNannay's 2017 Performance review was never issued via advice of
8 counsel, the Mayor had discussions with Chief McNannay about the 2017 performance review.
9 *See Vanek Decl.* The Mayor told McNannay his review was "not shaping up" due to his
10 mismanagement of the Police Department budget. *Id.* Moreover, McNannay was told by the
11 Mayor multiple times that his performance was not shaping up: examples include lack of
12 maintaining the police department budget and entering into contracts on behalf of the City,
13 exposing the City to potential liability. *See Vanek Decl.* The Mayor's objective was never to get
14 rid of Chief McNannay. *Id.* Rather, the Mayor's objective was to fix substantial problems with
15 the Police Department. *Id.* However, every time the Mayor offered to help Chief McNannay
16 with better organizing the Police Department, Chief McNannay consistently told the Mayor he
17 "had no idea what they did back there." *Id.*
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20 **December 2017 City Council Meeting**

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22 Around December of 2017, Chief McNannay, in his capacity as Police Chief, presented
23 the Police Department's 2017 Year End Report ("Report") to the City Council without giving
24 the Council a chance to look it over prior to the meeting. *See McNannay Dep. 72: 4-12.* The
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1 Council members were bothered by Chief McNannay's lack of professionalism at the meeting
2 and even reached out to both the Mayor and Chief McNannay regarding his actions. *See Exhibit*
3 **9**. Because of complaints by City Council members, Mayor Vanek issued McNannay a letter of
4 reprimand. *See Vanek Decl.; see also Exhibit 10* (letter of reprimand).
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6 Chief McNannay admitted in his deposition that he went to the city council meetings in
7 his capacity as Police Chief. *See McNannay Dep. 72: 4-12.*

8 Suspicious Package

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10 In February 2018, Chief McNannay failed to take control of a scene involving a
11 suspicious package. At the time, he chose to blame Chris Mathis, including threatening to arrest
12 her, rather than accepting responsibility for your own shortcomings in handling the incident. An
13 independent review of the incident by the Pullman Police Department found that

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15 the scene could have been controlled better at the point Chief McNannay first got
16 involved. A take charge attitude could have then set a tone, where this event could
17 have unfolded without confusion. Evacuating everyone out of the office area
18 where the package was set, and placing Officer Jaelene Leeson in charge of the
19 perimeter to make sure no one entered the area and disturbed the package, would
20 have been a good maneuver.

21 The same review found that Chris Mathis's actions were appropriate. Chief
22 McNannay's inaction placed individuals at unnecessary risk of harm. *See Exhibit 11* (Pullman
23 Police Department Report).

24 Investigation into Notice of Hire Forms

25 In October 2018, Officer Joseph Handley applied to be a full-time officer with the City
26 of Colfax. Officer Handley had been a part-time officer with the City of Colfax and worked

1 with another agency as well. Lynda Kramlich, the City of Colfax Clerk, realized that the City
2 of Colfax did not have a polygraph test or psychological test on file for Officer Handley.
3 When Ms. Kramlich asked Chief McNannay about the situation, Chief McNannay told her
4 that Officer Handley was grandfathered in, so the requirement was not necessary. Chief
5 McNannay further stated that he did not believe the City of Colfax would need to perform a
6 polygraph or psychological test on Officer Handley, even if hiring him fulltime.
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8 On October 10, 2018, Ms. Kramlich emailed Tisha Jones to verify Chief McNannay's
9 position. In response, Ms. Jones provided Ms. Kramlich with email correspondence between
10 Ms. Jones and Chief McNannay from late-2016 in which Ms. Jones informed Chief
11 McNannay that the pre-requisite testing is necessary for all law enforcement personnel,
12 regardless if part-time or fulltime. Ms. Jones further told Ms. Kramlich that there is "no such
13 thing as a grandfathering of these requirements." Ms. Jones reviewed the Notice of Hire
14 forms on file with CJTC and stated,
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17 Given the dates the hire forms were declared and signed under penalty of perjury, I
18 was under the impression the Colfax PD conducted their own
19 poly/psych/background (with fingerprint submission) as per my email on
12/05/2016.

20 Ms. Jones concluded her email with,

21 As for the question as to "Emerson and Handley working part time for us, can they
22 work for us without these items being complete?" I suggest contacting your legal
23 counsel to answer that question. For CJTC purposes, if the information you have
24 provided is true and these tests have not been completed, they have not met the
25 requirements of RCW 43.101.080 (19), RCW 43.101.095 (2) or Chapter 139-07
26 WAC, for the Colfax Police Department.

1 See Jones Decl.; See also **Exhibit 12** (emails between Jones and Kramlich). Ms. Jones did not
2 mention any discussion with Chief McNannay in 2016 suggesting that he sign the forms. Ms.
3 Jones had no record of that conversation. See Jones Decl.
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5 Based on the October 10, 2018 correspondence from Ms. Jones, the City of Colfax
6 reviewed the Notice of Hire forms it had on file for its police officers. The City of Colfax
7 discovered that a Notice of Hire form for Officer Handley dated November 30, 2016, and
8 signed under penalty of perjury by Chief McNannay, indicated a background check date and
9 polygraph examination date that were never conducted by the City of Colfax. The City of
10 Colfax also found a December 6, 2016 email from Tisha Jones to Chief McNannay indicating
11 that the City of Colfax was required to perform the test for all law enforcement officers
12 employed by the City of Colfax, regardless of fulltime or part-time status or current
13 employment by another agency. Chief McNannay acknowledged the requirement noting the
14 hardship the requirement causes smaller agencies. The City of Colfax then discovered a
15 second Notice of Hire form for Officer Handley dated December 7, 2016, that did not include
16 the section for the background check date and polygraph examination date contained in the
17 November 30, 2016 Notice of Hire form. The City of Colfax found a similar form for Officer
18 Steven Perez also dated December 7, 2016. Both forms were executed by Chief McNannay
19 attesting under penalty of perjury that the City of Colfax had complied with the statutory
20 prerequisites. Knowing that this was not true, on October 22, 2018, the City of Colfax placed
21 Chief McNannay on paid leave pending an investigation See **Exhibit 13**.
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1 Upon placing Chief McNannay on paid leave, the City of Colfax commissioned Clear
2 Risk Solutions to investigate the certification matter. John Young, who had performed the
3 investigation leading to Mr. McNannay's hiring also conducted this investigation. Mr. Young
4 has worked for Clear Risk for 15 years and currently serves as its Director of Investigations,
5 where he oversees four other investigators. *See* Young Dep. 13:21-22. Mr. Young has law
6 enforcement training, including investigation training. He worked for Grant County as a
7 deputy sheriff for 11 years and then as its elected Sheriff for 4 years. *Id.* at 6:21-7:1. Mr.
8 Young does not believe the City paid any money to Clear Risk specifically for his
9 investigation. *Id.* at 25:1-4. He is further not aware of any contract between the City and
10 Clear Risk. *Id.* at 24:16-18. Mr. Young is not aware of any communication between the City
11 and Clear Risk relating to Mr. McNannay or otherwise that occurred prior to his investigation.
12 *Id.* at 52:7-14. Mr. Young did not believe any information provided by Mayor Vanek or
13 Chris Mathis had any influence on what he was investigating. *Id.* at 51:12-17.

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17 On November 12, 2018, Clear Risk Solutions provided Mr. Young's report based on his
18 investigation *See Exhibit 14*. Based on the findings of dishonesty in the Clear Risk Solutions
19 Report, on November 19, 2018, the City of Colfax notified Chief McNannay of a disciplinary
20 ("Loudermill") hearing to be held on November 29, 2018 *See Exhibit 15*. The notice
21 provided a list of findings by Clear Risk that Chief McNannay would have an opportunity to
22 respond to.
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2 **Loudermill Hearing**

3 On November 29, 2018, a disciplinary hearing was held to give Chief McNannay an
4 opportunity to respond to the findings of Clear Risk Solutions. Chief McNannay was joined
5 at the hearing by his former attorney, Keller Allen. Chief McNannay was provided a copy of
6 the Clear Risk report for him and his attorney to review. There was no time limit set on how
7 long Chief McNannay had to review the report. The report was not provided to Chief
8 McNannay to attempt to maintain its privileged nature, if Chief McNannay were to be
9 terminated and it was not necessary to utilize in an appeal. This was done in good faith to try
10 to protect Chief McNannay's interests.
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13 At the hearing, Chief McNannay took a position similar to those stated in his appeal to
14 this Commission. Chief McNannay asserted that he was directed by Tisha Jones of CJTC to
15 submit the old New Hire form, that he was not aware of the statutory mandate, and that others
16 before him had done it as well. Chief McNannay referenced a November 27, 2018 email
17 from Tisha Jones to Lynda Kramlich in support of his position that he was directed to submit
18 the old form.
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21 Also at that hearing, Chief McNannay verified that Clear Risk Solutions' Report
22 accurately summarized the information provided by him to Clear Risk Solutions during its
23 investigation. This included Chief McNannay telling the investigator Chief McNannay did
24 not recall whether he subjected Officer Perez and Officer Spitzer to the prerequisite testing
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1 and that he might have documentation of the testing in his office. Chief McNannay further
2 stated at the hearing that he was aware of the mandate when he joined the City of Colfax
3 Police Department and, despite coming from another agency, subjected himself to the testing.
4 He also provided a January 2013 email from CJTC notifying him of the testing requirements,
5 providing new forms regarding those requirements, and stating that it “is important that
6 agencies review the attached WAC [139-07],” which governs conditions of law enforcement
7 employment. Chief McNannay further confirmed at the disciplinary hearing that he had hired
8 one officer terminated from Pullman Police Department without testing and hired another
9 officer who failed to complete probation with the Spokane Police Department. For both
10 officers, Chief McNannay did not perform any prerequisite testing or background check, but
11 claimed to have made some calls to see if there were any concerns about the officers. Chief
12 McNannay could not recall who he called and did not make a record of the calls.
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16 Additional Investigation

17 Since Chief McNannay provided additional information at the disciplinary hearing that
18 was not considered by Clear Risk Solutions, the City of Colfax decided to provide Clear Risk
19 Solutions the new information for Clear Risk Solutions to revise its report as it deemed
20 necessary. Chief McNannay remained on paid leave during that time. On December 19,
21 2018, Clear Risk Solutions issued its final report *See Exhibit 16*. Clear Risk Solutions found
22 “Chief McNannay committed perjury in signing the certifications, knowing that he had not
23 complied with the requirements.” Clear Risk Solutions further found that:
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1 Chief McNannay had a duty to ensure that the requirements were complied with,
2 and he failed to do that. Since the initiation of this investigation, Mayor Vanek has
3 required all part-time officers and all new officers to comply with the background
4 check, psychological evaluation, and polygraph testing to continue employment
5 with the City of Colfax. This is the appropriate way to resolve this concern. Officer
6 Handley has completed all the requirements and become a full-time officer. Officer
7 Emerson chose not to undergo the background investigation and thus is no longer a
8 part-time employee.

9 Based on Clear Risk Solutions findings, the City of Colfax discharged Chief McNannay
10 effective January 17, 2019.

11 **IV. Argument**

12 **A. Chief McNannay was terminated for just cause**

13 Importantly, although an employer may not make its termination decisions arbitrarily,
14 “whether the plaintiff actually committed the violation is irrelevant; the question is whether at
15 the time plaintiff was dismissed defendant reasonably, in good faith, and based on substantial
16 evidence believed plaintiff had committed the violation.” *Wlasiuk v. Whirlpool Corp.*, 81 Wn.
17 App. 163, 177–78, 914 P.2d 102, 112 (1996), modified, 932 P.2d 1266 (1997) (emphasis
18 added); *see also Gaglidari v. Denny's Restaurants, Inc.*, 117 Wn.2d 426, 438, 815 P.2d 1362,
19 1369 (1991) (Washington Supreme Court ruled, “whether plaintiff was actually fighting is
20 irrelevant to this action; rather, the issue is whether at the time plaintiff was dismissed
21 defendant reasonably, in good faith, and based on substantial evidence believed plaintiff had
22 done so.”) (emphasis added); *Lund v. Grant Cty. Pub. Hosp. Dist. No. 2*, 85 Wn. App. 223,
23 229, 932 P.2d 183, 185 (1997) (quoting *Gaglidari*, 117 Wn.2d at 438, 815 P.2d 1362.)

24 The facts stated herein establish that, at the time the City terminated Mr. McNannay, it
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